

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**MARY PRZYTULA and BRAD BREDE, on  
behalf of themselves and all others similarly  
situated,**

No. 17 Civ. 5124

**Plaintiffs,**

**v.**

**BED BATH & BEYOND INC.,**

**Defendant.**

**DECLARATION OF JON McGILLEN**

I, JON McGILLEN, based on my personal knowledge of the facts stated herein, testify by Declaration as follows:

1. I am over the age of 18 and am otherwise competent to testify to the matters contained in this Declaration, and if so called, would testify to the facts below.
2. All of the statements in this Declaration are true and accurate to the best of my knowledge.
3. The facts set forth in this Declaration are based on my own personal knowledge of the stores that I oversee in the Central Region.
4. I became employed by Bed Bath and Beyond Inc. (“BBB”) approximately 22 years ago. I was eventually promoted through the ranks to Store Manager, District Manager, and to my present role as Regional Manager. I have been a Regional Manager with BBB for over 16 years. In my current capacity as a Regional Manager of the Central Region, I oversee 68 stores ranging in volume—9 are very high volume, 7 are high volume, 33 are mid volume, and 19 are

low volume. My stores are primarily in Texas, Oklahoma, Kansas, Missouri, and Louisiana. I also have responsibility for 3 stores in Arkansas.

5. Typically, a BBB Regional Manager oversees District Managers and Area Managers in the Region. A BBB District Manager has responsibility for a number of stores in a particular geographic area. Reporting to the District Manager are Store Managers, each of whom is responsible for a single store. The Store Managers, in turn, have Assistant Store Managers (“ASMs”) reporting to them. In the Central region that I oversee, each store has between 0 and 4 Assistant Store Managers. Each store has between 0 and 6 Department Supervisors who report to the Assistant Store Managers. Assistant Store Managers supervise Department Supervisors and other hourly associates. The number of hourly associates varies greatly from store to store, with the lower volume stores having fewer than 20 and higher volume stores having upwards of 60 or 70.

6. There are two types of ASMs at BBB: Operations Managers and Merchandise Assistant Managers. All ASMs at BBB in the Central Region are classified as exempt employees.

7. Both Operations Managers and Merchandise Assistant Managers are expected to do primarily exempt work. The responsibilities required of an ASM vary as a result of a number of factors.

8. One of these factors is store volume. While their exempt responsibilities remain the same, their individual experience varies.

9. Similarly, local management and the Store Manager of each store affect an ASM’s experience.

10. The type of ASM (Operations vs. Merchandise Assistant) has an impact on their day-to-day exempt responsibilities. While both types of ASMs are responsible for managing the Department Supervisors and store associates who report to them, Operations Managers generally supervise more employees than Merchandise Assistant Managers and in different ways. For example, Operations ASMs have responsibility for scheduling and payroll and thus by virtue of that role, manage associates' scheduling conflicts or requests for time off, as well as managing the payroll within the store.

11. ASMs are responsible for interviewing and participating in hiring decisions. An ASM in a low volume store typically conducts more interviews and participates in more hiring because there are fewer senior managers to assist in the interviewing and hiring process. In a high volume store, ASMs may be involved less frequently in the hiring and interviewing process given the number of other senior managers available to assist.

12. Store volume also has an impact on an ASM's duties. Stores that do not conduct as much business, or stores that are heavily influenced by market seasonality, affect ASMs' responsibilities because their stores do not employ as many associates, and as a result, there are not as many associates to delegate to.

13. In certain markets, the number of employment applications BBB receives is affected by the surrounding oil and energy business. For example, some of my stores in Texas, Louisiana and Oklahoma see an influx of applicants when the oil and energy business is suffering because the unemployment rate rises accordingly. When this happens, duties such as reviewing applications, conducting interviews, and offering employment to applicants consumes more of an ASM's time in a store that is affected by the oil and energy business and has an unusually high applicant flow. This type of applicant flow is independent from whether a store is

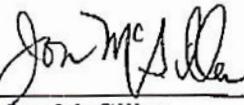
a high or low volume store. Conversely, when the oil and energy business is flourishing, sales in nearby stores typically increase warranting additional hiring. However, the applicant flow is typically low because the unemployment rate is also low in light of the oil and energy businesses success. In these instances, hiring can still be a difficult and time consuming process, because ASMs are expected to ensure that vacant positions are filled.

14. The level of turnover within a store also affects ASMs' duties. Some stores are in markets where the surrounding high school graduation rate and/or secondary education rate is high. Typically, in those markets, the turnover rate is higher in BBB's stores than others because there are hourly associates who recently graduated from high school and are leaving for college. ASMs in those markets conduct more interviewing, hiring, and training of employees in light of the recurring need to replace former high school associates.

15. Additionally, ASMs are sometimes designated as the "Manager on Duty," ("MOD") which affords them an opportunity to assume extra exempt responsibilities. Serving as the MOD means that the person designated as MOD is the decision maker for the store, managing service levels, safety, applicant flow and other areas. In a high volume store, the MOD role is typically always fulfilled by an ASM. In a store with fewer senior managers, Department Supervisors may sometimes fulfill the MOD role. The variation in ASMs acting as the MOD is also based on the decision-making of the Store Manager, who is responsible for designating these roles on a day to day basis.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of December 2017.

By:   
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Jon McGillen  
Regional Manager  
Bed Bath and Beyond Inc.